

"Appellants before us assail the government summation but made no objection to it during its progress or after it had been concluded; examining it we do not find that it substantially exceeded fair inferences from the evidence. Its final note stressed that the government's concern was ' * * * with the misbranding of these drugs and we want them properly labeled.' [Emphasis supplied.] As he finished his summation government counsel said to the jury, 'All I ask you is that you render a fair and proper verdict in this case * * *.' In the thorough and scrupulously fair charge, among many other things, the court said:

In considering the evidence before you your attention is directed to the fact that not all matters coming to your attention in this trial can be considered by you as evidence. The indictment, the opening remarks of counsel, the arguments of counsel, the remarks of counsel, and the remarks of the Court during the trial of the case are not evidence and are not to be considered by you as such in determining the facts of the case.

"We have examined all other points of appellants. They do not raise substantial questions and need not be discussed at length."

"The judgments of the district court will be affirmed."

A petition for a rehearing was filed by the defendants with the court of appeals; and, on 3-1-57, the court denied the petition in the following opinion:

PER CURIAM: "The petition for rehearing contains nothing of merit which has not been heretofore presented to and considered by this court.

"There is a copy of an affidavit, executed February 11, 1957, annexed to the petition. It is submitted by appellants as an example of other affidavits which they state they are prepared to produce. It characterizes language, tone, range of voice and manner of the trial judge on two occasions; the first, during a pre trial motion and the second, during the course of the trial. Both those incidents were argued fully and disposed of specifically by our opinion in the case. The material offered was never before the trial court. It is entirely outside the record. In those circumstances the deliberate attempt to bring it before this court is inexcusable.

"The petition for rehearing will be denied."

A petition for a writ of certiorari was filed with the United States Supreme Court, and was denied on May 27, 1957.

5386. Appetum. (F. D. C. No. 40180. S. No. 59-375 M.)

QUANTITY: 6 ctns., 10,000 tablets each, at Philadelphia, Pa., in possession of Philadelphia Ampoule Laboratories.

SHIPPED: 5-29-56, from Brooklyn, N. Y., by Sweets Laboratories, Inc.

LABEL IN PART: (Ctn.) "Ford Gum & Machine Co., Akron, N. Y. Sweets Labs, Inc., Brooklyn, N. Y."

RESULTS OF INVESTIGATION: The dealer stated that it was his intention to repackage the material in bottles holding 28 tablets and relabel as follows: "28 Tablets appetite high potency Vitamin B₁ - B₁₂ * * * Increases appetite and stimulates growth * * * speeds convalescence. Assists in the treatment of chronic diarrhea and celiac diseases * * * Ingredients Vitamin B₁ . . . 10 mg. * * * Vitamin B₁₂ . . . 25 mcg."

Analysis showed that the article contained less than 5 mg. of vitamin B₁ per tablet.

LIBELED: 4-26-57, E. Dist. Pa.

CHARGE: 502 (f) (1)—the article, when shipped and while held for sale, failed to bear adequate directions for use for the purposes for which it was intended.

DISPOSITION: 5-27-57. Default—destruction.

**DRUGS AND DEVICES ACTIONABLE BECAUSE OF DEVIATION FROM
OFFICIAL OR OWN STANDARDS**

5387. Digitoxin powder. (F. D. C. No. 40334. S. No. 62-192 M.)

QUANTITY: 1 100-gram btl. at New York, N. Y.

SHIPPED: 1-15-57, from Paris, France, by Expandia.

LABEL IN PART: "Digitoxin U. S. P."

RESULTS OF INVESTIGATION: Examination showed that the article contained not more than 54.1 percent of digitoxin.

LIBELED: 7-5-57, S. Dist. N. Y.

CHARGE: 501 (b)—the strength of the article, when shipped, differed from the standard for digitoxin set forth in the United States Pharmacopeia since the article contained less than 90 percent of digitoxin, the minimum permitted by the standard.

DISPOSITION: 10-17-57. Default—destruction.

5388. Digitoxin powder. (F. D. C. No. 39889. S. No. 59-018 M.)

QUANTITY: One ctn. containing 100 grams at Philadelphia, Pa.

SHIPPED: 1-28-57, from New York, N. Y., by Desmo Chemical Corp.

LABEL IN PART: "Net 100 gms. * * * Digitoxin U. S. P. * * * Assay: Digitoxin 99.1 percent Loss on drying: 0.62 percent."

RESULTS OF INVESTIGATION: Examination showed that the article contained not more than 79 percent of digitoxin.

LIBELED: 3-19-57, E. Dist. Pa.

CHARGE: 501 (b)—the strength of the article, when shipped, differed from the standard for digitoxin set forth in the United States Pharmacopeia since the article contained less than 90 percent of the labeled amount of digitoxin, the minimum permitted by the standard.

DISPOSITION: 8-28-57. Default—destruction.

5389. Vitamin capsules. (F. D. C. No. 40198. S. No. 62-186 M.)

QUANTITY: 162 100-capsule btls. at Bronx, N. Y.

SHIPPED: 1-8-57, from Newark, N. J.

RESULTS OF INVESTIGATION: Analysis showed that the article contained less than 50 percent of the declared amount of vitamin B₁₂.

LIBELED: 5-29-57, S. Dist. N. Y.

CHARGE: 501 (c)—the strength of the article, while held for sale, differed from that which it was represented to possess, namely, 10 micrograms of vitamin B₁₂; and 502 (a)—the label statement "Vitamin B-12 10 Mcgms." was false and misleading.

DISPOSITION: 7-16-57. Default—destruction.

5390. Halazone tablets. (F. D. C. No. 40318. S. No. 67-482 M.)

QUANTITY: 25 cases, containing 2,575 btls., at Falls Church, Va.

SHIPPED: Prior to 10-7-55, from North Chicago, Ill.

LABEL IN PART: (Btl.) "100 Water Purification Tablets for Purifying Drinking Water in Canteens Halazone N. N. R. * * * Each tablet contains: 0.004 Gm. (1/16 grain) of Halazone with sodium carbonate, sodium chloride and boric acid."